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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ADAM J. WEISSMAN and GILAD ISRAEL ELBAZ

Appeal 2009-008028
Application 10/689,903
Technology Center 2100

Before: JOHN A. JEFFERY, DEBRA K. STEPHENS, and
JAMES R. HUGHES, *Administrative Patent Judges*.

STEPHENS, *Administrative Patent Judge*.

DECISION ON APPEAL

Appeal 2009-008028
Application 10/689,903

Appellants appeal under 35 U.S.C. § 134(a) (2002) from a non-final rejection of claims 1-28, 30, 31, and 36-40. (Br. 1). Claims 29 and 32-35 have been canceled. (*Id.*). We have jurisdiction under 35 U.S.C. § 6(b) (2008).

We AFFIRM.

Introduction

According to Appellants, the invention is a system and method for determining a meaning of a document to match the document to content. A source article is accessed and regions in the source article are identified. A local concept(s) associated with each region is determined and analyzed to identify any unrelated regions. The local concept(s) related to unrelated regions are eliminated to determine relevant concepts and those relevant concepts are analyzed to determine a source meaning for the source article. The source meaning is then matched with an item meaning that is associated with an item from a set of items. (Abstract).

STATEMENT OF CASE

Exemplary Claim

Claim 1 is an exemplary claim and is reproduced below:

1. A method comprising:

receiving a source article;

identifying a plurality of regions in the source article;

determining at least one local concept expressed in each region;

analyzing the local concepts of each region to identify one or more unrelated concepts;

eliminating the unrelated concepts from a determination of a source meaning for the source article; and

matching the source article with an item selected from a set of items based at least in part on a relationship between the source meaning and a meaning of the item.

Prior Art

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Chipalkatti US 6,484,161 Nov. 19, 2002

REJECTIONS

The rejections of claims 1-27 and 36-40 under 35 U.S.C. § 101 have been withdrawn. (Ans. 2).

Claims 1-28, 30, 31 and 36-40 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Chipalkatti. (Ans. 3-15)¹.

¹ Claims 2 and 5 are omitted in the Examiner’s statement of this rejection in the Answer on page 3. However, we note that the Examiner originally rejected these claims (Non-Final rejection 6 and 7); Appellants addressed these rejections in their Appeal Brief (Br. 6 and 13; the Examiner did not withdraw these rejections; and the Examiner addressed the rejection of these claims on pages 5-6 of the Answer. Thus, we consider the omission of claims 2 and 5 from the statement of rejection to be harmless error, and claims 2 and 5 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Chipalkatti.

GROUPING OF CLAIMS

(1) Appellants argue independent claims 1 and 14 as a group on the basis of claim 1. Appellants also argue claim 36 on the same basis as claim 1. Appellants do not present separate arguments for dependent claims 5-13, 18-24, 25-27, and 37-40 (App. Br. 9-17). We select independent claim 1 as the representative claim. We will, therefore, treat claims 5-14, 18-27, and 36-40 as standing or falling with representative claim 1.

(2) Appellants argue dependent claims 2 and 15 as a group. (Br. 13). Appellants do not separately argue claims 3, 4, 16, and 17 which depend from claims 2 and 15, respectively. We select claim 2 as the representative claim. Therefore, claims 3, 4, and 15-17 stand or fall with representative claim 2.

(3) Appellants argue independent claim 28 separately. (Br. 13-15). Claims 30 and 31 which depend from claim 28, were not separately argued. We select claim 28 as the representative claim and treat claims 30 and 31 as standing or falling with claim 28.

See, 37 C.F.R. § 41.37(c)(1)(vii).

ISSUE 1

35 U.S.C. § 102(e): claims 1, 5-14, 18-27, and 36-40

Appellants argue their invention is not anticipated by Chipalkatti because Chipalkatti does not relate to matching a source article with an item, but is instead directed to processing data queries in a distributed computer system (Br. 10). Additionally, Appellants contend the Examiner tortures the plain meaning of the term “source article” and the rejections are logically inconsistent (Br. 11). Appellants also contend a business listing would not

be considered a concept and business listings in categories would not be considered a source meaning for a source article (*id.*).

In response, the Examiner maintains the search results of Chipalkatti that comprise categorized document objects are received by a user's browser and therefore reads on receiving a source article (Ans. 15 and 16). Further, the Examiner finds Chipalkatti discloses business listings are stored by category and are furthermore stored by synonyms (Ans. 16). The Examiner finds since the categories of business listings are stored synonymously, business listings are concepts in light of Appellants' definition of concept (*id.*). In addition, the Examiner finds Chipalkatti discloses determining whether the categories of the retrieved documents set match the terms of the user query, thereby determining by synonyms, whether the categories are related, thus disclosing determination of a source meaning of a source article (*id.*).

The Examiner further finds Chipalkatti describes matching a source article with an item selected from a set of items based at least in part on the relationship between the source meaning and the meaning of the item (Ans. 17). Specifically, the Examiner finds Chipalkatti discloses since the search results categories can be ordered, for example, by significance and alphabetically, they must be matched with at least one of the other resulting categories in order to do so (*id.*).

Issue 1: Has the Examiner erred in finding Chipalkatti discloses the limitations recited in claim 1?

FINDINGS OF FACT (FF)

Appellants' Invention

(1) “A concept can be defined using a cluster or set of words or terms associated with it, where the words or terms can be, for example, synonyms. A concept can also be defined by various other information, such as, for example, relationships to related concepts, the strength of relationships to related concepts, parts of speech, common usage, frequency of usage, the breadth of the concept and other statistics about concept usage in language.”

(Spec. 8 and 9, [0019]).

(2) The source meaning can be a vector of weighted concepts. (Spec. 13, [0029]).

(3) The items can include, documents, such as web pages and advertisements, and knowledge items, such as keywords, and can be received from the content server device 140. (Spec. 12, [0027]).

(4) The source article can be a web page and the matched item can be a keyword. Alternatively, the source article can be a web page and the matched item can be an advertisement. (Spec. 13 and 14, [0030]).

ANALYSIS

We agree with and adopt the Examiner's findings in the Answer (Ans. 3-5 and 15-17), and provide additional support therefore in the following analysis.

Appellants have explicitly defined “concept” in their Specification and thus, the claims will be construed in light of this definition. Appellants’ argument that “concept” has a different meaning to one of ordinary skill in

the art (Br. 12) is not persuasive as Appellants have chosen to be their own lexicographer. Since Appellants chose to act as their “own lexicographer and clearly set forth a definition of the disputed claim term,” *Edward Lifesciences LLC v. Cook Inc.*, 582 F.3d 1322, 1329 (Fed. Cir. 2009), the definition in the specification controls. *See also Phillips v. AWH Corporation*, 415 F.3d 1303, 1321 (Fed. Cir. 2005) (en banc). As a result, we see no error in the Examiner’s findings that Chipalkatti discloses concepts (i.e., business listings).

Appellants have not, however, defined the term “source article.” Appellants, by way of example, explain that the source article may be a web page. (FF 4.) Thus, in light of these somewhat general descriptions and the absence of any concrete definition of the term “source article” in the Specification, we see no error in the Examiner’s position (Ans. 16) that the search results of Chipalkatti – comprising categorized document objects received by a user’s browser (Fig. 29 and col. 17, ll. 34-36) – disclose a “source article” under the term’s broadest reasonable interpretation, despite Appellants’ arguments to the contrary (Br. 10 and 11). We also find no error in the Examiner’s findings that Chipalkatti discloses a “determination of a source meaning for a source article” (Ans. 16 and 17). Again, Appellants have not defined the disputed term nor have Appellants presented any definition except to say one of ordinary skill in the art would not consider identification of business listings in categories determining a source meaning (Br. 12).

A claim is given its broadest reasonable construction consistent with the specification. *In re Prater*, 415 F.2d 1393, 1404 (CCPA 1969). “It is a ‘bedrock principle’ of patent law that ‘the claims of a patent define the

invention to which the patentee is entitled the right to exclude.”” *Phillips v. AWH Corp.*, 415 F.3d at 1312 (quoting *Innova/Pure Water, Inc. v. Safari Water Filtration Sys., Inc.*, 381 F.3d 1111, 1115 (Fed. Cir. 2004)).

Appellants’ Specification, which acts as “the primary basis for construing the claims,” *id.* at 1315, supports the construction given to the terms by the Examiner.

Appellants’ arguments for claim 36 are similar to those set forth for claim 1 except that Appellants argue the recited “document” is not disclosed by Chipalkatti (Br. 15-17). Based on the reasoning set forth for claim 1, and based on the term “document” being broadly but reasonably construed in light of the Specification, we find no error in the Examiner’s findings.

Accordingly, we agree with the Examiner’s finding that Chipalkatti discloses the limitations recited in claim 1 and commensurately recited in claims 14 and 36. Claims 5-13, 18-27, and 37-40 depend from independent claims 1, 14, and 36, and were not separately argued, relying instead on the arguments set forth for claim 1. Thus, claims 5-13, 18-27, and 37-40 fall with claim 1. Accordingly, Appellants have not shown the Examiner erred in finding Chipalkatti anticipates the invention as recited in claims 1-14, 18-27, and 36-40.

ISSUE 2

35 U.S.C. § 102(e): claims 2 and 15

Appellants argue their invention is not anticipated by Chipalkatti because one of ordinary skill would not reasonably consider a user interface to constitute a source article. Appellants also submit that Chipalkatti neither

describes nor suggests a determination of a source meaning for the user interface shown in FIG. 44. (Br. 13).

The Examiner finds the alphabetically-ordered categories are displayed in the search results and thus, Chipalkatti discloses displaying the matched item on the source article.

Issue 2: Have Appellants shown the Examiner erred in finding Chipalkatti discloses displaying the matched item on the source article as recited in claim 2?

ANALYSIS

We agree with the Examiner and adopt the Examiner's findings in the Answer (Ans. 5 and 13) that the alphabetically ordered categories displayed in the search results describe displaying the matched item on the source article. Accordingly, we find Chipalkatti discloses claim 2 and commensurately recited claim 15. Claims 3 and 4 which depend from claim 2 and claims 16 and 17 which depend from claim 15 were not separately argued and thus, fall with claims 2 and 15.

ISSUE 3

35 U.S.C. § 102(e): claim 28

Appellants argue their invention is not anticipated by Chipalkatti because the reference does not teach "determining a first local concept expressed in the first content region and determining a second local concept expressed in the second content region" as recited in claim 28. (Br. 13-15). More specifically, Appellants argue that the Examiner tortures the plain meaning of "content region" (Br. 14). Further, Appellants contend one of

ordinary skill would not reasonably consider any regions that do exist in Chipalkatti's GTE Superpages Internet site express local "concepts" (Br. 15). Appellants further assert Chipalkatti does not provide any clues as to how concepts expressed in the regions are determined (*id.*).

The Examiner finds the GTE Superpages Internet online query tool of Chipalkatti discloses "business name/category" and "address" content regions that read on the first and second content regions claimed (Ans. 18). The Examiner further finds the "name match" procedure for business name entries that also performs a "derive score" procedure for zipcode or business entries discloses determining the first and second local concept expressed in the first and second content region, respectively (Ans. 18 and 19).

Issue 3: Have Appellants shown the Examiner erred in finding the limitations as recited in claim 28?

ANALYSIS

Again, we agree with and adopt the Examiner's findings. Appellants have not defined "content region" and accordingly, we adopt a broad but reasonable definition in light of the specification. (*See Prater*, 415 F.2d at 1404-05). Thus, given the absence of any concrete definition of the term "content region" in the Specification, we see no error in the Examiner's position (Ans. 18) that the "business name/category" and "address" content regions correspond to first and second content regions as recited. Therefore, Appellants have not shown the Examiner erred in finding Chipalkatti describes "identifying a first content region and a second content region in the source article" as recited in claim 28.

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We also find no error in the Examiner's findings that Chipalkatti discloses "determining a first local concept expressed in the first content region and determining a second local concept expressed in the second content region" (Ans. 14 and 15). As specified by the Examiner, a name matching occurs – thus, a concept expressed in business name/category is determined to perform the match and deriving a score (*see* col. 40, ll. 54-63).

Accordingly, Appellants have failed to persuade us of error in the Examiner's findings with respect to claim 28. Claims 30 and 31 depend from claim 28 and were not separately argued. Thus, claims 30 and 31 fall with claim 28.

DECISION

The Examiner's rejection of claims 1-28, 30-31, and 36-40 under 35 U.S.C. § 102(e) as being anticipated by Chipalkatti is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2009).

AFFIRMED

Vsh